IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.316 OF 2004

Vithal Namdeo Gavande .. ..Appellant

Versus

Ramchandra Pundlik Mankar .. ..Respondent

Mr.S.G.Surana for appellant
Mr.Uday Warunjikar for respondent

CORAM : P.V.KAKADE, J.

DATE : 18th OCTOBER, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Malegaon dated 3.11.2003 allowing the appeal and setting aside the Judgment and Order passed by the lower court in Reg. Civil Suit No.225 of 1997 and dismissed the suit.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for recovery of

possession of the suit property, Grampanchayat property No.527. The property in fact belonged to the State but the defendant was in actual possession of the property and therefore, he was made defendant party to the suit, who did not contest the suit and did not file his written statement, therefore, on the basis of statements made by the plaintiff the trial court decreed the suit holding that the defendant shall deliver possession of the suit property to the plaintiff. The appeal was carried to the District Court. The learned lower appellate court after hearing both the parties came to the conclusion that the plaintiff failed to prove that he was homeless person and suit property was allotted to him by the State Government under the scheme to give plots to the homeless persons and as such the appeal was allowed. Hence the present appeal.

4. At the outset it may be noted that at the time of hearing of the appeal for admission the learned Counsel for the appellant submitted that he wanted to produce certain documents in support of his allegations that he has title to the suit property for which purpose he was asked to move proper application under Order 41 Rule 27 of the Civil Procedure Code. Accordingly,

application is moved annexing with certain documents showing that demand of tax were made by the Grampanchayat and he has paid such taxes. There is absolutely no document of title showing either the land was allotted by the State Government to the plaintiff or in any other manner ownership right was created in his favour with regard to the suit property.

5. Therefore, it is obvious that the lower appellate court has rightly held that the plaintiff has failed to prove proper allotment of the suit property by the State Government in his favour when he had come with the specific case that the suit plot was allotted to him by the State Government about 23/24 years back as he was homeless person. Since none of these aspects were proved, the plaintiff was non suited. In my considered view, the findings recorded and reasoning adopted by the learned lower appellate court while dismissing the suit and allowing the appeal are seen to be just, legal and proper and therefore, it would brook no interference.

. In the result the appeal stands dismissed with no order as to costs. Consequently Civil Application No.1779 of 2005 also stands dismissed with no order as

to costs.